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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,164	04/04/2005	Susanne Binder	34157-707.831	5602

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EXAMINER	
KIM, TAEYOON	
ART UNIT	PAPER NUMBER
1651	

MAIL DATE	DELIVERY MODE
12/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/530,164	Applicant(s) BINDER ET AL.	
	Examiner Taeyoon Kim	Art Unit 1651	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☒ They raise the issue of new matter (see NOTE below);
   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *42,43,45-49,53-59 and 61*.
   Claim(s) withdrawn from consideration: *60*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE: The after final amendment filed on 11/28/2007 introduces a new matter into the application. The term "confluent" in claim 42 does not have an appropriate support from the specification. In the specification, RPE cells appear to be removed when they are subconfluent (see paragraph [0066]). There is no disclosure of RPE cells grown on amniotic membrane until they become "confluent" or a composite comprising "confluent" RPE cells on the membrane. Furthermore, the term "confluent" can be broadly interpreted that the state of cells being adjoining/contacting, and Fig. 3 of Dutt et al. show amnion. biomat. having RPE cells in contact each other, thus they are "confluent" on the amniotic membrane substrate.

Continuation of 11. does NOT place the application in condition for allowance because: In the response to the previous office action, applicant argued that the amnionic membrane of Dutt et al. is not considered as an equivalent to collagen substrate of Liu because Liu requires the growth of RPE cells while the amniotic membrane of Dutt et al. cannot achieve such growth, further citing that Dutt et al. theach the amniotic membrane substrate inhibited cell growth. This argument is not persuasive because 1) Dutt et al. clearly show that collagen I, IV, fibronectin, amniotic membrane, ECM and Matrigel as three tested substrates for RPE cells; 2) Dutt et al. show that RPE cells indeed grow on various different substrate with different growth rate (see Table 1, 2 and Fig. 1). Therefore, all of these substrates can be used for growth of RPE cells although they have different growth rate. Therefore, they are considered an art-accepted equivalent for culturing RPE cells.

In terms of "inhibition of cell growth" asserted by applicant, the examiner acknowledges that Dutt et al. indeed disclose "inhibition" of cell growth. However, it is noted that the inhibition of cell growth is not just for amniotic membrane substrate. Dutt et al. disclose that collagen substrate also inhibits cell growth too (see p.1098, left column, last line). Since Dutt et al. utilize amniotic membrane substrate and collagen for culturing RPE cells as an alternative each other, and Liu teaches collagen for RPE cell culturing, it would have been obvious to a person of ordinary skill in the art to use the amniotic membrane substrate as an art-accepted equivalent, or suitable alternative to collagen substrate for culturing RPE cells.

Based on the above discussion, the current application is not in place for allowance and the previous claim rejections are still valid.

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Leon B. Lankford, Jr.
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AU-1651